

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10243 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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RANJANBEN NARSI GOHIL

Versus

RBAN LAND TRIBUNAL AND THE SECRETARY

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Appearance:

Kum. V.P.Shah, Senior Advocate, with Kum. K.J. Brahmhatt, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/04/96

ORAL JUDGEMENT

Rule. Service of Rule is waived by learned Assistant Government Pleader Shri T.H.Sompura for the

respondents. By consent of the learned Lawyers appearing for the parties, this petition is taken up for its hearing and disposal today itself.

2. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 18th February 1994 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.1 herein) on 29th April 1995 in Appeal No.Surat-32 of 1994 is under challenge in this petition under Article 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 2699 square metres.

2. The facts giving rise to this petition move in a marrow compass. The petitioner filed her declaration in the prescribed form under section 6 (1) of the Act with respect to her holding within the urban agglomeration of Surat. It came to be processed by respondent No.1. After observing necessary formalities under section 8 thereof, by his order passed under sub-section (4) thereof, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 2699 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.1 under section 33 of the Act. A copy of the memo of appeal is at Annexure-B to this petition. It came to be registered as Appeal No.Surat-32 of 1994. By the order passed on 29th April 1995 in the aforesaid appeal, respondent No.1 dismissed it. Its copy is at Annexure-C to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Article 226 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-C to this petition.

3. The grievance voiced by learned Advocate Kum. Shah for the petitioner is to the effect that a creek passes through one parcel of land bearing survey No.85 situated at Magob and, according to the Rules framed by the Surat Urban Development Authority, no construction would be permissible on such creek land. Learned Advocate Kum. Shah for the petitioner has brought to my notice one Circular issued by and on behalf of the State Government (respondent No.3 herein) on 3rd/6th May 1987 wherein respondent No.2 has been directed to take into consideration the Rules which do not permit construction inter alia on the land covered by a creek. A copy of

this Circular is kept on record.

4. It becomes clear from the aforesaid Circular that the authorities below have not applied their mind as to whether or not any creek passes through the aforesaid land bearing survey No.85 situated at Magob and whether or not any construction would be permissible in accordance with the building regulations answering its definition contained in section 2 (b) of the Act. In that view of the matter, there is no hesitation in coming to the conclusion that the impugned orders suffer from the vice of non-application of mind on the part of their authors. They cannot therefore be sustained in law.

5. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures-A and C to this petition cannot be sustained in law and they have to be quashed and set aside. The matter has to be remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law for considering whether or not any creek passes through the aforesaid land bearing survey No.85 situated at Magob and whether or not the land covered by such creek is constructible in view of the building regulations prevalent in the area. Respondent No.2 shall also keep in mind the aforesaid Circular issued by and on behalf of the State Government on 3rd/6th May 1987 for the purpose.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.2 herein) on 18th February 1994 but communicated on 24th February 1994 at Annexure-A to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 29th April 1995 in Appeal No.Surat-32 of 1994 at Annexure-C to this petition is quashed and set aside. The matter is remanded to respondent No.2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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